

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATIONAL PASTEURIZED EGGS, INC.
and NATIONAL PASTEURIZED EGGS, LLC,

Plaintiffs,

v.

ORDER

10-cv-646-wmc

MICHAEL FOODS, INC., ABBOTSFORD
FARMS, INC., CRYSTAL FARMS
REFRIGERATED DISTRIBUTION COMPANY,
and M.G. WALDBAUM COMPANY,

Defendants,

and

MICHAEL FOODS, INC.,

Plaintiff,

v.

ORDER

11-cv-534-wmc

NATIONAL PASTEURIZED EGGS, INC.,

Defendant.

National Pasteurized Eggs seeks an order from the court allowing it to supplement its initial expert report in light of the court's subsequent order on claims construction.¹ As a general matter, the court agrees with Michael Foods that wholesale changes in the theory of liability, for example, an attempt to introduce an opinion of infringement under the doctrine of equivalents, would be unjustified at this late date. *See Procter & Gamble*

¹ The parties' stipulation as to deadlines for other filings has already been approved by the magistrate judge. (Dkt. #114.)

Co. v. McNeil-PPC, Inc., 615 F. Supp. 2d 832, 837 (W.D. Wis. 2009). On the other hand, it would be only appropriate for the experts to tailor their existing opinions to the specific claims construction adopted by the court. If that is all NPE is asking to do, then that may be appropriate and indeed advance the litigation.

Accordingly,

IT IS ORDERED that:

- 1) NPE may serve a supplement to its initial expert report on or before December 16, 2011, so long as the supplemental report is drafted to narrowly incorporate the court's specific constructions and disclaimers.
- 2) To ameliorate any prejudice to Michael Foods, Michael Foods may have until January 13, 2012 to serve its rebuttal expert report.
- 3) The dispositive motion deadline is moved to January 20, 2012.

Entered this 13th day of December, 2011.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge